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The Res Gestae

UNIVERSITY OF MICHIGAN LAW SCHOOL

Sept. 22, 1977

Reflections:

An Interview With Dean Theodore J. St. Antoine

[Editor's Note: Dean Theodore J. St. Antoine confirmed his intention to resign, effective June 30, 1978, in a letter to President Robben Fleming September 9, 1977. The Dean served a full five-year term which ended in June, 1976, and was asked to continue as dean for another term. Preferring to return to teaching and research, but also wishing to see the capital fund-raising effort through to a successful conclusion, Dean St. Antoine agreed to serve another term on the understanding that he would resign after two years.

What follows is the first part of an interview with the Dean conducted by David Duperrault, of the RG staff, on September 12. The remainder of Dean St. Antoine's remarks will be published in future issues.]

RG: *What are your personal plans for the period following your tenure as dean?*

St. Antoine: Tentatively, I plan to leave Ann Arbor for a year in order to give my successor a chance to get started without having me here, looking over his or her shoulder. I am not ready, however, to take an entire year off. I want to recharge my batteries before I devote a year to full time research. Probably I will teach for part of next year at another law school, perhaps one in another country. I assume that I will be back here at Michigan, teaching full-time, after that.

RG: *What do you hope to accomplish in your final year as dean?*

St. Antoine: The biggest objective for this year is to push the capital program through to completion. The campaign goal is a total of \$10 million, of which \$8 million is for the new library addition. We now have \$6 million of that \$8 million,

but I don't know whether the University will let us start digging until we obtain the last \$2 million. I'm hoping to persuade the central administration to permit construction to begin as soon as we receive an additional \$1 million, because past trends indicate that alumni giving will provide another million over the next two years. The money we have in hand would finance construction through August, 1979, assuming the digging starts in December. The plans being prepared by the architect, Gunnar Birkerts, will be completed by next week, so with University approval, we could begin construction before the end of this year.

Therefore, our immediate goal is to obtain \$1 million now, with the expectation that the other million will be received over the next year or two.

(See **DEAN**, page 6)

NEW LIBRARY DELAYED DECEMBER START?

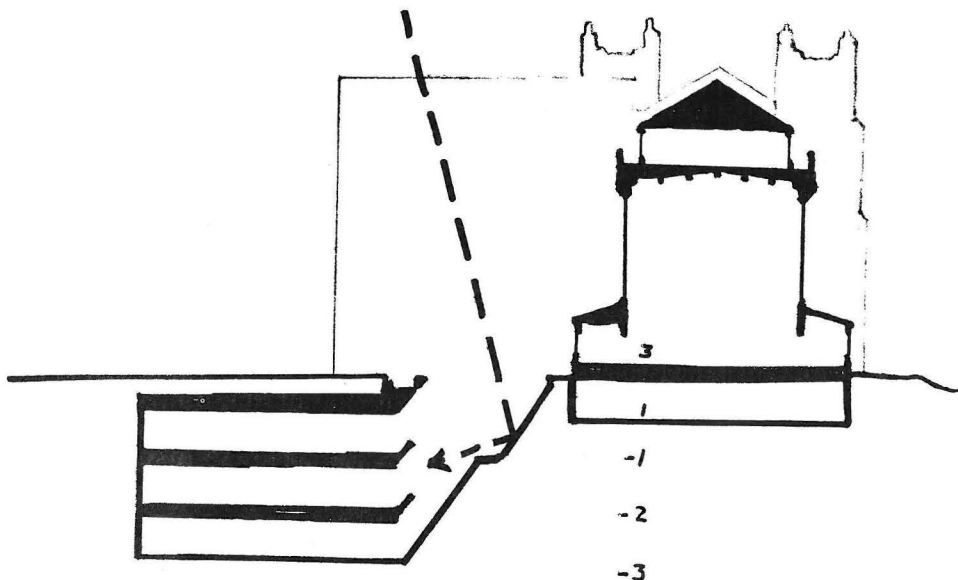
Those of you who had fond visions of spending your closing days at the Law School safely entombed in the new underground library, surrounded by moles, worms, and tree roots, and protected from the bright light of day will be disappointed for two reasons.

First, the proposed design calls for a 150-foot-long skylight which will not only allow sunlight to penetrate the depths of the building, but will also allow users of even the third (lowest) level a clear view of the present library. Second, it's unlikely that the library will be ready for use before Winter term 1980. By that time only readers who have experienced extreme academic difficulties will still be around.

The current plans call for some 62,500 square feet of floor space on three levels. Earlier proposals for a glass and metal tower which was to include office space were scrapped for reasons of economy and lack of compatibility with the current Jacobean Gothic buildings. The plans as they now stand will solve the overcrowding problem in the stacks by providing space for about 200,000 volumes.

Of the eight million dollar projected cost, about six million dollars has already been raised. This shortfall poses a serious threat

(See **HOLE**, page 3)



UNDERGROUND VIEW from Architect's drawing
Arrow shows how limestone reflects sunlight

Res Gestae

© 1977

THE RES JESTERS

Dagwood.....Bob Brandenburg
 Beetle Bailey.....Ken Frantz
 Brenda Starr.....Carol Sulkas
 Hagar the Horrible..Kevin McCabe
 Bugs Bunny.....Crusader Rabbit
 Brother Juniper...Dan FitzMaurice
 Zonker.....Steve Mehlman
 Gil Thorp.....Greg Need
 Hazel.....Stephanie Hazelton
 Archie.....Tim Knowlton
 Dick Tracy.....Joe Green
 Mary Worth.....Mary Worth
 Charlie Brown...Dave Duperrault
 Doonesbury.....Mike Halpin
 Momma.....Helen Betts

TO: Law School Student Organizations

FROM: Susan M. Eklund, Assistant Dean

Last year many of us noticed the need for a system to avoid scheduling various law school activities at conflicting times.

Marge Demers, the departmental secretary (Room 300 H.H.), will keep a record of all scheduled and tentatively scheduled conferences, banquets, etc. Report activities to her as soon as they are planned and we should be able to alert organizations to conflicts.

Thanks for your cooperation.



INTERVIEWING

WANT TO SEE AN OCCASIONAL GOOD MOVIE AT THE LAW SCHOOL THIS YEAR?

The Film Committee needs your help in planning a film schedule, and in advertising and showing movies. Persons with technical expertise in film projection and sound reproduction are especially needed. Contact Jim Amodio at 764-8941 or leave name and telephone # in the Film Committee mailbox at the Lawyers Club desk.

READ-ONLY

BY MMM

MEMORIES

The reception to the last ROM column was the best yet--so far, I haven't been mugged. Obviously, I must not have insulted enough people.

 Let's start thing right with this week's "Thanks For Nothing" Award.

May I have the envelope, please? ...And the winner is, the LSSS--for outstanding work in the "Useless Rules" category (Library Admissions Division).

At exam time, the place is crowded--and I won't say a word about rules during that period. But now? Why bother? Has a single law student been unable to find a chair? Has each table been filled? Are the lines to the john too long?

Besides, the new rule completely ignores the great entertainment value of the library groupies--often the only thing of value to be found in the library. Where else can one enjoy the spectacle of 75 undergraduate spouse-hunters competing under jungle rules?

Dear LSSS: We used to have a Coke machine in the game room--now all we have is a metallic pile of junk. Please, would you get it fixed, or at least rent one from the company? If so, I'll even withdraw the "Thanks For Nothing" Award.

 By the way, first year people, LSSS stands for Law School Student Senate. And when it comes to spending our money, it stands for almost anything (even funding the RG).

Is Professor Kauper really Steve Allen in disguise? The voice and mannerisms are almost exactly the same. Let's see--does Allen do a routine on trademarks?

Come to think of it, I still think that Professor Kennedy looks like the "bean buyer" on the Hills Bros. coffee ads (Harold Gould). Maybe Kennedy should have specialized in entertainment law, rather than bankruptcy.

Is there a mania for concrete on
 (See MMMore, page 3)

Avocado v. Filbert —U.S.— (1977)

Plaintiff alleges that on the afternoon of May 21, 1977, defendant did willfully and wantonly, "beat, stab, skin, bruise, puncture and otherwise debilitate" plaintiff's intestate with "quick, heavy blows" of her clenched fists and with various actions performed with sundry sharp instruments, including knives, can openers, awls, and pitchforks; further alleging that these circumstances amount to trespass "abhorrent and grievous to the hearts and pits of artichokes and avocados, respectively, world over." Plaintiff seeks action in trespass for recovery of 59c, intestate's value as a fungible good.

Defendants demurs, and countersues in nuisance for alleged substantial infringement of her right to "enjoy and otherwise eat certain goods, duly purchased with sufficient consideration for the sole

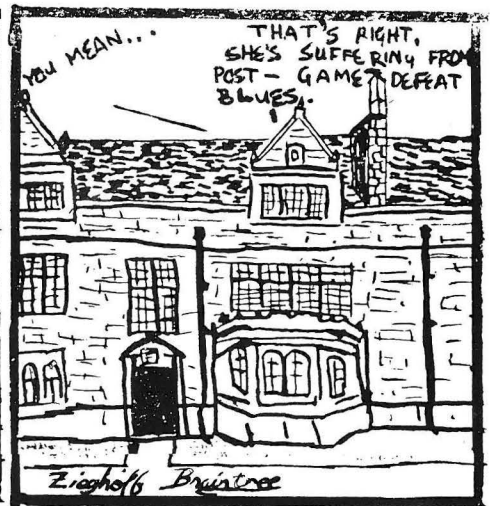
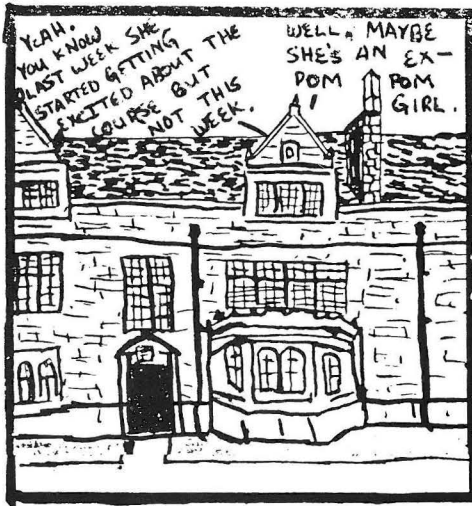
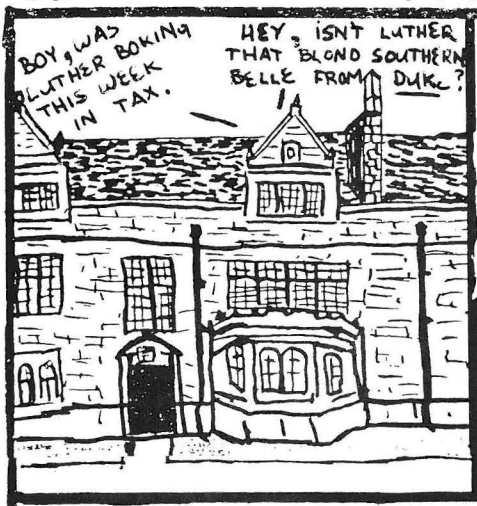
purpose of ingestion" by defendant and her relations.

GREEN, J.:

While the emotional appeal of plaintiff's case is strong, as guardians of accepted legal practice we can do no more than affirm the law as it has been established, and it seems to me that in this case our mandate is clear. By even the most generous analysis of precedent, this court has been unable to find any grounds for recognizing plaintiff's claim.

We are, at first, left at great loss to discover any negligence. Ms. Filbert testified, "I fully intended to do everything I did and I fully realized beforehand any and all consequences attendant upon my instigatory impetus." (Ms. Filbert is an attorney by trade.)

We must turn our attention then,
 (See CASE, page 4)



(Continued from page 1)

THE HOLE STORY; THE NEW LIBRARY

to the whole project since the University is afraid that it will have to "bail out" the Law School with its own funds if the Law School runs out of money with key portions of the building, e.g. the roof, uncompleted.

The University has already committed what Dean St. Antoine calls "a substantial sum" to the project, but this amount is included in the six million. So there remains what the Dean jokingly calls "a small problem of two million dollars."

One way of making up the shortage is to cut back the cost of the building. The working drawings are currently being examined in order to find places where costs can be cut, equipment installations postponed, and portions left temporarily unfinished. There are no plans to cut back the size of the building. It is hoped that as much as one million dollars of the construction cost can be put off until more funds are on hand.

That still leaves the project about one million short. Rather than postponing the project until this money can be raised, the Dean hopes that the University will give the go-ahead on the project so that an estimated 1% per month inflation in construction costs can be avoided. It is estimated that the funds on hand will run out in August, 1979, before the structure is complete.

The Dean is confident that an additional million can be raised while construction is under way. His opinion is based on current annual giving of about 500,000 per year. The difficulty lies in convincing the University that this income

source is stable enough to be relied upon.

If the University gives the okay and enough cutbacks can be found, the project might get under way in December of this year. One faculty member feels that February is a better estimate. There will be no problem excavating in the winter because the hole will go down some 50 feet, well below the frost line.

The architect's design calls for a grand staircase of 48 steps leading down into the building from the current reading room. There will be about 350 study carrels in the new structure and each will have a section that can be locked by the carrel holder. It hasn't been determined how these carrels will be assigned.

The 200,000 volumes to be kept in the new annex will be on open stacks except for the reserve collection. It is not clear what will be done with the current reserve desk, although Professor Pooley, the Director of the Library, is understood to favor maintaining a

second desk with limited hours of operation. The present reading room will probably continue as a study area.

The design of the new structure is one of the most modern imaginable. It is "energy efficient" because it is underground. Although the building will be fully climate-controlled, it is expected to use only one-fourth the energy of a comparable above-ground structure. There are provisions in the plans for later addition of computer terminals and microfilm readers.

Many people have expressed concern about how an underground building effects its users. Will such an environment be conducive to study? The Dean has looked into the matter and gives assurances that "very, very few people react in any negative way." In contrast with the present dark, dingy, cramped quarters used by many law students for study, the new library should actually be an improvement. Pity you'll never get to use it.

MMMMore

(Continued from page 2)

this campus? Just across the street, on the north side of the Quad, there's a new stretch of sidewalk; it connects two points already connected by a (slightly doglegged) sidewalk, no more than 15 feet away.

Even half of the grass areas on the Quad, between the sidewalk and South U, have been concreted. Why?

Graffiti from around campus: "When the bookstore raises prices,

the rest Follett the leader" ... "Joan of Arc is alive and (medium) well" ... "Do you trust in life after estates?" ... "Jesus saves, but Noah buys chattel paper."

Personal to the three law students who pulled the fire alarm in "A" section, Sept. 10: Brilliant, kiddies. What better time than when the Club was jammed with people at a dance, and all but one exit was blocked? Really brilliant.

Back to your sandboxes, turkeys.

MUSIC

NEW WAVE AND MODERN JAZZ

Timothy Sawyer Knowlton
Byablue—Keith Jarrett

I admit that I do not particularly care for the music of most of the modern jazz musicians. I much prefer the be-bop of such jazzmen as Charlie Parker, Dexter Gordon, Dizzy Gillespie, and Thelonious Monk (my favorite pianist on my favorite instrument). I find much of the modern jazz cacophonous or atonal. Ironically, be-bop faved similar resistance when it was coming in to its own in the late 40s and early 50s. (I have been accused of adopting the same type of mentality toward the moderns as Cab Calloway displayed toward be-boppers when he contemptuously referred to theirs as "Chinese music".)

Despite the introduction it is with great pleasure that I report the arrival of an exceptional album by modern jazz pianist, Keith Jarrett. *Byablue* contains six compositions. Four of the pieces were written by Jarrett's frequent drummer/percussionist, Paul Motian. One selection is written by Jarrett himself, and the remaining piece (and the one I like best) was written by Margot Jarrett. Since Motian composed most of the music, I expected not to like it. The albums released under Motian's own name I find nearly unlistenable, particularly his 1973 ECM release, *Conception Vessel*. Motian's writing for Jarrett, however, is precisely that, for Jarrett.

As to the music itself, "Byablue" which opens the album, displays the tight and pleasing sound of Jarrett and his frequent sidemen - Motian on drums, Dewey Redman on sax, and Charlie Haden on bass. These men have recorded some fine quartet works for Impulse and Atlantic records. The album closes with a lilting solo version of "Byablue" played by Jarrett on piano. "Konya" and parts of "Yahallah" display Jarrett on soprano saxophone and remind me of much of Rahsaan Roland Kirk's work on Atlantic. "Yahallah", a Motian creation, strikes me as over ambitious—a splicing together of musical segments which do not seem to work as a unified composition. "Rainbow", written by Margot Jarrett, is a lyrical piece played as a fairly

traditional trio creation by Jarrett, Haden, and Motian. It is strikingly similar to many of the pieces on Columbia's *Bill Evans Album*. "Trieste", also by Motian, is the album's other stand out. This is an intense, brooding composition which is a perfect vehicle for Jarrett's piano.

The album is well produced by Esmond Edwards and the recording is crisp. My only objection to the album is its lack of liner notes, a failing in almost every Jarrett album I've seen.

Live At The Rat—Various Bands

The Rat is Boston's showcase of local punk/new wave bands. (I use the terms "Punk" and "new wave" only because I don't have enough space to explain why these terms are a rather unsatisfactory grouping of the many interesting new bands so classified). *Live At The Rat* is a double album containing nineteen cuts by ten bands. Most of the bands are mediocre. Some of the bands such as Susan, the Infliktors, and Thundertrain actually contain individual standout musicians (all of Thundertrain's musicians, in fact, display better than average technical proficiency). The problem is that their ideas are cliched, both musically and lyrically. Their performances sound flat and sterile. Other bands such as Willie "Loco" Alexander Boom Boom Band, Sass, and the Real Kids lack any real

competence on their instruments although their compositions are more entertaining and their performances come off as more vital. The most successful band on the record is DMZ which sounds like the Ramones. Both bands follow a similar formula of three chord rock, their music sounding like a series of tuned power generators.

Live At The Rat is patterned after *Live At CBGBs* (two discs, sixteen cuts, eight bands). CBGBs, located in New York City, was the first of the new wave/punk clubs. I like the CBGB album much better than the Rat album. This is not because the CBGB musicians are technically more competent, indeed, they are not. I prefer the CBGB album because most of the bands exhibit a unique style or personality. For the most part the Rat bands sound just like so many other guitar oriented groups. While only one of the Rat bands uses a keyboardist, most of the CBGB bands do. The music is more diverse. The CBGB composers also have much more flair when it comes to lyrics.

For those who like the punk genre *Live At The Rat* is an interesting collector's item. I would not recommend it to others. For anybody interested in hearing some of the music of the new wave bands I would suggest Television's *Marquee Moon* (the new wave's one classic work), the *Ramones*, *Blondie*, and *Mink DeVille*.

(Continued from
page 2)

Case of the Avocado

to the question of whether Ms. Filbert's behavior constitutes a failure to exercise due care. Defendant's counsel seeks to have us recognize as negating evidence Ms. Filbert's statement, "I care, I care. Really, I really care." With all due respect to Ms. Filbert's sentiments, however, this court does not feel that that would be an appropriate move.

Instead, we have asked ourselves the inevitable question: what would the reasonable and prudent woman do in like circumstances? In this case, it appears that additional clarification is necessary before proceeding further.

It is well established that the physical and mental disabilities of an individual must be taken into

account in prescribing standards for reasonable care. *Memorial Hospital of South Bend, Inc. v. Scott* 261 Indiana 27, 300 N.E. 2d. 50 (1973). In this case, it was decided that plaintiff could not be expected to flush toilets properly, given his status as a reasonably prudent impaired individual. It is clear, therefore, that the Court must ascertain reasonable and prudent care for a person in like or similar circumstances, and not necessarily for that of the average individual.

In assessing the standard to be applied in the extant case, we must take note of the myriad of facts brought out by the defendant in trial court indicating that a special standard should be applied to her.

CASE

LEXIS INFORMATION

AVOCADO v. FILBERT

(Continued from page 4)

Instead of laboriously summarizing them here, we are inclined merely to recall counsel's brilliant summation of the factual material, which indicated only that, "indeed, Ms. Filbert is a rare individual."

Here we are left at an interesting crossroads where all signals seem to leave us with no conclusion but that there is only one way to go. Or, as Justice Frankfurter once very eloquently put it: "why did the chicken cross the road? Why, to get to the other side." And so, to get to the other side, we recognize that the extraordinarily unique facets of Ms. Filbert's character present us with no choice but to adopt the standard of "what would a reasonably prudent Janet G. Filbert do in like or similar circumstances?" At this point our remaining argument runs a course exactly opposite that of the expected *res ipsa loquitur*, viz., that the *non-negligence* of the defendant may be inferred from the mere facts of the situation. For in answer to the question, "what would a reasonably prudent Janet G. Filbert do in like or similar circumstances?" we must invoke the ancient legal maxim, "she would do that which she hath done."

Under this rule we adjudge plaintiff to have exercised all due care. In that she is not negligent, we hold her not guilty of trespass.

WASHTENAW COUNTY COURT TRIAL

A visiting judge of the Washtenaw County court will be conducting a trial in the Moot Court room every day during the month of September. Please feel free to attend.

ATTENTION: COMMITTEES

If any L.S.S.S. committees or any other Law School committees want to arrange for food or beverage from the Lawyers Club, you must give the food service at least ten days notice.

LEXIS SHEET

As you may know U of M Law School acquired LEXIS (computerized legal research) from Mead Data Central in November of 1976. The Law School rents the machine from Mead at a flat rate for the use of UNIVERSITY OF MICHIGAN LAW STUDENT, FACULTY OR STAFF FOR LAW SCHOOL PROJECTS ONLY. Our contract with Mead prohibits the use of this LEXIS in connection with employment in which fee-paying clients are being represented. Apart from that restriction, law students and faculty are encouraged to acquaint themselves with the use of the machine, which is located in Room 310 at the West end of the Reading Room, on any legal questions that interest them.

A schedule of the hours when LEXIS is available for training or open use is provided as well as times when student consultants will be available to answer any questions you may have concerning LEXIS. The telephone number is 764-3204.

LEXIS TRAINING SESSIONS

Sign ups for training sessions are posted on the door to the LEXIS ROOM. The LEXIS PRIMER, on reserve at the front desk, should be read before attending the training

session, which takes approximately two hours.

LEXIS CONSULTING HOURS

During the times identified on the schedule as consulting periods student consultants are available to answer any questions you may have concerning the use and operation of the LEXIS system. Use of LEXIS during these periods is on a first-come, first-served basis, subject to interruption at any time for consulting purposes.

RESERVED HOURS

During the times identified on the schedule as reserved hours use of LEXIS may be reserved for 1/2 hour periods by signing up for a slot on the Reserved Hours Sheet posted on the door to the LEXIS room. You can only sign up for one such slot per evening but may continue using the machine if no one signs up for the slot following yours.

LEXIS PROTOCOL

During open hours there is no time limit on searches if no one is waiting to use LEXIS after you. Should someone come in and wish to use the machine, the person currently on LEXIS has 15 minutes to complete his or her search and relinquish the machine.

LEXIS HOURS

	Monday	Tuesday	Wednesday	Thursday	Friday	SAT	SUN
9	C	C	C	C	T		
10				T	T		
11	C	T	C	T			
12	C	T	C	C	C		
1	C		C	C			
2-5	R		C	C			
6	R	C	C	C			
7	R	T	T	C	T		
8	R	T	T		T		
9	R	T	T		T		
10	R	T	T		T		
11	R						
12	R						

Open Hours = Unmarked + Consulting Hours
 Training Hours = T
 Consulting Hours = C
 Reserved Hours = R (1/2 Hour periods)
 Closed = [X]

DEAN DISCUSSES CHALLENGES TO LEGAL EDUCATION

(Continued from page 1)

Another important responsibility of mine will be to keep the faculty happy, harmonious, and in Ann Arbor. I hope to continue to succeed in foiling the efforts of other law schools to raid our faculty to fill deanships, faculty chairs, and so forth. The faculty have resisted these blandishments for the most part, I am happy to say. I am very proud of this faculty. Its members offer a rich variety of extraordinary talents. We have brilliant scholars and scintillating classroom performers; some are thoughtful, some thought-provoking. We must recognize that although their interests and talents are diverse, their value to this institution is enormous.

A task that has troubled me throughout the time I have been dean has been that of improving rapport between the faculty and students, and among students, for that matter. We're at a disadvantage because this is such a large school, and because the faculty-student ratio is not high, by any means. On the other hand, Ann Arbor is small, so people are able to return to the school for evening events. Also, the Lawyers' Club is a facility which is conducive to developing better relations within the school. Visitors often comment that this faculty is unusually cordial, to the visitors and to each other. Perhaps students don't perceive them to be cordial, but they really are.

Sue Eklund, and Rhonda Rivera before her have done an excellent job of reducing the anxiety and confusion which are an unfortunate part of being a law student. I am delighted with the way they have helped to meet students' needs. Additionally, the students who have conducted the orientation programs for first-year students have made an important contribution. This breaking-down of barriers is another goal we will continue to seek to achieve.

RG: *Beyond the topics you have just discussed, what are the major challenges facing the law school in the years ahead?*

St. Antoine: This is not so much the dean's problem as it is a challenge for the whole school; we must



continually re-examine the curriculum and, if necessary, modify it to make it more realistic and meaningful. Curricular reform is a recalcitrant beast. Everyone--students, faculty, alumni--is an expert on what courses should be taught, and any innovation is bound to tread on someone's toes. One person will be forced to reorganize the content of a course he's been teaching for many years, and another may be required to research and master a whole new body of material. Others may be forced to stop teaching a subject they enjoy. There is tremendous resistance to programs, such as an expanded writing course, which involve the time-consuming drudgery of reading dozens of essays.

I think that the integration of other disciplines into the traditional law school curriculum is very important. Too many students are ignoring courses which combine legal problems with those of economics, sociology, psychology, government, international relations, medicine and other sciences, history, language, philosophy and other disciplines.

RG: *Are you referring to the programs which are offered by other schools within the University in conjunction with the law school?*

St. Antoine: I was thinking of the courses in the law school curriculum. The joint degree programs are useful for the few who will become government policy-makers and so on, but the courses offered in law

school are very valuable to all practitioners, at least those of the caliber of our graduates. Inter-disciplinary work should be a part of every student's legal education.

There is a sort of triad of qualities which we hope to impart to students at this law school. One is to develop the analytical powers of our students, and I think we do a good job of that. We also try to give our students a sense of objectives, an understanding of what the law should be trying to achieve. Here the law must look to other fields for guidance, and that is why inter-disciplinary studies are so important.

The third area, that of developing the skills which a practicing lawyer needs, is the one where we are least effective. The clinical law program and courses like trial practice, lawyer as negotiator, writing and advocacy, estate planning, business planning and lawyers and clients, do help to provide a foundation for practice. But the challenge facing legal education today is to improve its ability to teach such skills as drafting, negotiating, counseling and courtroom techniques at a time when higher education is feeling a severe financial pinch. The law school has traditionally been one of the cheapest schools in the university to operate, thanks to the "production line" method, which features a single professor lecturing to 100 students. Clinical programs, on the other hand, are very expensive because of the close supervision and low faculty-student ratio which they require. To be candid, we're not going to get the additional funds for these programs from the central administration, because they don't have it. Whereas the English and Classics Departments have nowhere else to turn for funding, law schools can appeal to the bar, both to individual alumni and to bar organizations. The practicing bar benefits from improvements in legal education, and the "legal establishment", bar associations, bar foundations, law firms and professional corporations, should support the law schools.